

Using Federal Funds to Remediate Lead

By Joseph Hedger

Although obscured in congressional debates over the Biden administration's broader domestic policy agenda, there is bipartisan consensus on the need to do more to ensure clean drinking water in schools and communities. Earlier this year, the U.S. Environmental Protection Agency (EPA) published revisions to rules on tightened restrictions on lead and copper, and the Senate has twice this year voted to improve water quality.

In April 2021, the Senate overwhelmingly passed the Drinking Water and Wastewater Infrastructure Act, and in August, they voted to approve the Infrastructure Investment and Jobs Act, which included \$55 billion in new spending for drinking water projects. A House vote was postponed in late September. If the bill were to pass, the increased investment would provide a springboard for states seeking to remove lead from drinking water and make children's learning environments safer.

In 2017, most U.S. school district officials who were surveyed reported that they either had not tested their schools' drinking water in the previous 12 months or did not know if they had, according to a 2018 Government Accountability Office report. Of the 43 percent of school districts that did test, 37 percent found elevated levels of lead in their drinking water.¹

There is no safe level of lead exposure for children. Even low levels of lead in the blood of children, especially those six years old and younger, can result in behavior and learning problems, lower IQ and hyperactivity, slowed growth, hearing problems, and anemia, according to the EPA.² Additionally, a study

on lead poisoning in Chicago neighborhoods found that Black and Mexican-American children consistently exhibited higher prevalence of elevated blood lead levels than White children.³ Whether it be through contaminated service lines or localized plumbing within schools, too many schools may be exposing children to lead in drinking water.

LEAD AND COPPER RULE

On January 15, 2021, the EPA published revisions to its lead and copper rule in the *Federal Register*. Established in 1991, the rule regulates contaminants in drinking water and sets action levels for measuring the presence of lead or copper that require public water system administrators to take action to treat or replace the water system if their systems exceed the level.⁴

On January 20, the Biden administration delayed the effective date of the rule, which was drafted during the Trump administration, so the agency could seek further public input, particularly from more at-risk communities. The EPA then extended the effective date to December 16, 2021, with a compliance date for water systems of October 16, 2024. The EPA noted the need to modernize and improve the rule, including by establishing a new lead "trigger level" at 10 parts per billion (ppb), which is based on the 90th percentile of tap water samples.⁵

The revisions also require public water system administrators to identify lead service lines and test for lead at schools and child care programs within their service areas for better target monitoring and potential service line replacement. Other changes address sampling protocols for conducting tap water monitoring to align with language in the 2016 Water Infrastructure Improvement for the Nation (WIIN) Act. WIIN is a grant program that most recently allocated funding to states in

August 2021 under the Small, Underserved, and Disadvantaged Communities Grant Program, which is administered by the EPA.

Even with the current proposed revisions to the lead and copper rule, there is no federal rule that compels schools or school districts to test their drinking water for lead, and most states do not require consistent testing either. Nonetheless, states have been addressing the presence of lead in schools. Some state health and environment departments released memos urging schools to flush water systems over the summer to deal with stagnant, potentially lead-exposed pipelines before students' return.

Other states and state boards have looked at amending their school water testing policies, including the New Jersey State Board of Education. In 2020, it changed requirements for local education agencies to test for lead in school drinking water from every six years to every three years.⁶ Using the EPA's Voluntary Lead Testing in Schools and Child Care Program Drinking Water Grant, the Georgia State Board of Education hired Research Triangle Institute to perform lead testing in 800 schools starting in early 2021. Georgia received \$1.1 million from the EPA in January 2020, and the state education agency began plans to educate and test for lead in schools with an emphasis on high-risk communities.⁷

"State boards of education can help to raise awareness so more schools and child care facilities buy in to conducting the lead tests. But to raise awareness, the communication has to go both ways, from the state to the schools, and from the schools to the state," said Cindy Mack, environmental health scientist with the EPA's Office of Ground Water and Drinking Water and senior program manager for the 3Ts program, at a recent NASBE conference.⁸ "If you have not heard from your state on this funding that is available, it's up to you to spread the word for the school and the child care facilities to ask the state and find out if they would be eligible under the WIIN grant program for testing or for some sort of subsidized funding for the testing."

While the current iteration of the infrastructure bill (October 2021) does not establish a federal requirement for schools to test for lead in drinking water, it does authorize funding for states to establish voluntary school testing, compliance monitoring, and reduction programs and to replace pipelines in water systems across the nation.

FUNDING OPPORTUNITIES

Although the nearly \$1 trillion Infrastructure Investment and Jobs Act (H.R. 3684) has faced months of back-and-forth negotiations, the water infrastructure portion has remained mostly intact, including about \$48 billion dispersed over five years. In its current form, the bill appropriates \$23.5 billion for Clean Water and Drinking Water State Revolving Funds (SRFs) and \$15 billion to the Drinking Water SRF Lead Funding, which is the most direct opportunity to replace lead pipes and service lines during fiscal years 2022–26. This program awards grants to each state based upon their most recent Drinking Water Infrastructure Needs Survey and Assessment, which is administered by the EPA every four years and outlines where the largest water quality investments are needed in each state.

The Clean Water and Drinking Water SRFs typically require states to match 20 percent of the grant to establish revolving funds for loans and other authorized assistance for eligible infrastructure projects. However, the infrastructure bill reduces the state match for fiscal years 2022–26 to 10 percent for the first two years, returning to 20 percent for the remaining three years. The lead removal funds fully waive any state match or cost-sharing requirement.⁹

Most of the framework for clean drinking water in the infrastructure bill came from the Drinking Water and Wastewater Infrastructure Act (S. 914), which was overwhelmingly passed by the Senate in April, 89 to 2. The language in this bill reauthorizes \$35 billion in existing and new programs to support drinking water and wastewater infrastructure projects and amends portions of the Safe Drinking Water Act so that compliance monitoring and lead remediation activities are included in the voluntary school and child care program lead testing grant program. The bill appropriates \$30 million for lead testing,

compliance monitoring, and lead remediation in schools for fiscal year 2022, \$35 million for 2023, \$40 million for 2024, \$45 million for 2025, and \$50 million for 2026.

The bill's other funding opportunities for clean drinking water include authorizations for the Small, Underserved, and Disadvantaged Communities Drinking Water Grant Program, aimed at helping public water systems in certain communities meet Safe Drinking Water Act requirements, and the Drinking Water System Infrastructure Resilience and Sustainability grant program.¹⁰

While the added \$15 billion in the Senate bill marks a significant push for replacing lead service lines, it will not be enough to replace all lead pipelines. The EPA estimates there are approximately 6 to 10 million lead service lines nationwide, with an average cost of replacement of around \$4,700 per line.¹¹ Similarly, without requirements for schools to test their water systems, states may not get an accurate picture of which schools are most affected by lead in water, and financial opportunities for remediating lead in school drinking water may be wasted. Regardless of the infrastructure bill's outcome, the federal government's emphasis will likely continue to boost incentives for clean water projects.

State boards of education can take this opportunity to advocate to other state and federal agencies for clear guidance on how schools and school districts can apply for funds and maintain safe facility practices, support grant funding and state requirements for school testing programs, and ask questions of state agencies to prioritize remediation efforts in schools where children are most at risk for lead exposure.

Joseph Hedger is NASBE's associate editor. This publication is supported by the Joyce Foundation, a private, nonpartisan foundation that invests in public policies and strategies to advance racial equity and economic mobility for the next generation in the Great Lakes region.

NOTES

¹ U.S. Government Accountability Office, "Lead Testing of School Drinking Water Would Benefit from Improved Federal Guidance," GAO-18-382 (Washington, DC: GAO, July 2018).

² U.S. Environmental Protection Agency, "Learn about Lead," web page (Washington, DC: EPA, July 2021), <https://www.epa.gov/lead/learn-about-lead#exposure>.

³ Robert J. Sampson and Alix S. Winter, "The Racial Ecology of Lead Poisoning: Toxic Inequality in Chicago Neighborhoods, 1995–2013," *Du Bois Review* 13 no. 2 (2016): 261–83.

⁴ Copper can also leach into drinking water through corroded plumbing, and though it is a natural nutrient, exposure at high levels can cause short- and long-term health issues in children and adults. The Lead and Copper Rule sets an action level of 1.3 parts per million for copper concentration in drinking water.

⁵ Elena H. Humphreys, "Addressing Lead in Drinking Water: The Lead and Copper Rule Revisions" (Washington, DC: Congressional Research Service, June 2021), <https://sgp.fas.org/crs/misc/R46794.pdf>.

⁶ Joseph Hedger, "States Ramp Up Lead Testing and Water Flushing in Schools," analysis (Alexandria, VA: NASBE, July 2021), <https://stateboardinsight.nasbe.org/states-ramp-up-lead-testing-and-water-flushing-in-schools/>.

⁷ "EPA Awards Georgia \$1,102,000 in Funding to Test for Lead in School Drinking Water," press release (Washington, DC: EPA, January 2020), <https://www.epa.gov/newsreleases/epa-awards-georgia-1102000-funding-test-lead-school-drinking-water>.

⁸ Carolina Pakenham, Pamela Pugh, and Cindy Mack, "Plenary Session: Preliminary Findings of Safe Drinking Water in Schools," presented at NASBE's 2021 Annual Conference, October 7, 2021.

⁹ Scott Berry, "Bipartisan Infrastructure Package Achieves Historic Investments, but More Is Needed" (Oakland, CA: US Water Alliance, August 2021), <http://uswateralliance.org/resources/blog/bipartisan-infrastructure-package-achieves-historic-investments-more-needed>.

¹⁰ Christopher J. Armstrong et al., "Infrastructure Investment and Jobs Act: Summary of Bipartisan Infrastructure Legislation" (Holland and Knight, August 2021), <https://www.hklaw.com/en/insights-publications/2021/08/infrastructure-investment-and-jobs-act-summary#WaterInfrastructure>.

¹¹ EPA, "Strategies to Achieve Full Lead Service Line Replacement" (Washington, DC: EPA, October 2019), https://www.epa.gov/sites/default/files/2019-10/documents/strategies_to_achieve_full_lead_service_line_replacement_10_09_19.pdf.